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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

(Assigned to the Honorable David G.
Campbell)

(Oral Argument Requested)

DORIS JONES,

Plaintiff,

v.

C.R. BARD, INC., a New Jersey
corporation and BARD PERIPHERAL
VASCULAR, an Arizona corporation,

Defendants.

**PLAINTIFF'S MOTION *IN LIMINE*
NO. 1:
UNRELATED MEDICAL ISSUES
RELATING TO USE OF NSAIDs**

Plaintiff Doris Jones moves this Court *in limine* to preclude at trial evidence and argument regarding her use of non-steroidal anti-inflammatory drugs (NSAIDs) and her alleged failure to follow medical advice not to use NSAIDs. Under Federal Rules of Evidence 402 and 403, this Court should exclude such evidence because it is irrelevant and to the extent it has any marginal relevance, its prejudicial effect substantially outweighs any probative value.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Evidence at Issue

Plaintiff Doris Jones suffers from migraine headaches. To treat those migraines, Mrs. Jones uses NSAIDs (like Advil and Ibuprofen), including something called “Goody’s” headache powder. Unfortunately, Mrs. Jones also suffers from a number of gastric issues, including ulcers, and the NSAIDs can cause issues with Mrs. Jones’ ulcers resulting in gastric bleeding. In unrelated visits with health care providers, doctors have advised Mrs. Jones to avoid NSAIDs because of the effect on her gastric system. Unfortunately for Mrs. Jones, however, that is easier said than done. Because of her financial condition, she does not have access to regular healthcare. As a result, NSAIDs are often the only relief available to her to deal with the migraines.

Consequently, there are various references in Plaintiff’s medical records and in the treating-physicians’ testimony designated by Bard regarding her failure to follow medical advice with respect to NSAIDs. In particular, Bard has designated testimony by Dr. Avino (who implanted her IVC filter) and Dr. Taylor (who saw her for entirely unrelated issues a year after the removal of the broken filter) relating to Mrs. Jones’ alleged failure to follow medical advice by continuing to take NSAIDs. But there is no evidence that taking NSAIDs impacts Mrs. Jones’ IVC filter or the fragment remaining inside her. Rather, Mrs. Jones suffered gastric ulcers and bleeding in her gastrointestinal tract before she received an IVC filter and has similar problems more recently. Those problems are entirely unrelated to the filter or any symptoms attributed to the filter. Indeed, Mrs. Jones has made no claim that the filter caused her gastric ulcers and bleeding or that any of her abdominal pain is attributable to the Eclipse IVC filter or its failure.

II. This Court Should Exclude This Evidence as Irrelevant and Unduly Prejudicial.

Plaintiff’s use of NSAIDs and any medical issues she has suffered as a result thereof (even if against medical advice) are not relevant to any issue in dispute. Nor is her

1 alleged failure to follow medical advice relating to NSAIDs. Neither of those issues
2 caused any of the injuries at issue here, and neither affected her IVC filter in any way.

3 Defendants contend that Plaintiff's bleeding ulcers and failure to follow medical
4 advice are relevant to her need for an IVC filter in 2010. That is clearly not the case,
5 however; neither of those reasons is identified in the Indications for Use for the filter.
6 Rather it is the presence of DVT that necessitated a filter – not bleeding from ulcers.
7 Moreover, and more importantly, even if those conditions were the reason Mrs. Jones
8 needed an IVC filter (they are not), they are still irrelevant because Plaintiff has never
9 contended that she did not need an IVC filter. Rather, her claim is that the IVC filter she
10 received was defective and that Bard failed to provide appropriate warnings regarding the
11 safety and effectiveness of that filter. Both of those claims assume that she needed an
12 IVC filter.

13 Moreover, to the extent that there is any relevance to this evidence, the potential for
14 prejudice to Plaintiff and confusion of the jury substantially outweighs any probative
15 value. Fed. R. Evid. 403. The evidence is little more than an attempt to smear Plaintiff as
16 irresponsible and somehow at fault for her condition.

17 **III. Conclusion**

18 Plaintiff's use of NSAIDs is not related to whether Bard's Eclipse IVC filter was
19 defectively designed, whether Bard provided adequate and appropriate warnings relating
20 to the safety and effectiveness of the filter, why Plaintiff's Eclipse IVC filter failed and
21 fractured, or any injury Plaintiff suffered as a result thereof. Simply, these facts are
22 irrelevant. Moreover, the potential prejudice of the evidence and confusion of the jury
23 substantially outweighs any probative value it may have. Accordingly, this Court should
24 preclude any evidence or argument relating to Plaintiff's use of NSAIDs or failure to
25 follow medical advice relating to such use.

1 RESPECTFULLY SUBMITTED this 18th day of April 2018.

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13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 18th day of April 2018, I electronically transmitted the
15 attached document to the Clerk's Office using the CM/ECF System for filing and transmittal
16 of a Notice of Electronic Filing.

17 /s/ Jessica Gallentine

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